

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications
and Energy on its own Motion
pursuant to G.L. c. 159, §§ 12 and 16, into the
collocation security policies of Verizon New England Inc.
d/b/a Verizon Massachusetts

D.T.E. 02-8

HEARING OFFICER RULING ON MOTIONS OF XO MASSACHUSETTS, INC. AND
ALLEGIANCE TELECOM OF MASSACHUSETTS, INC. TO COMPEL RESPONSES TO
INFORMATION REQUESTS

I. INTRODUCTION

On January 24, 2002, the Department of Telecommunications and Energy ("Department") opened an investigation into the collocation security policies of Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"). On April 5, 2002, Verizon filed panel testimony in this matter that included proposed collocation security measures. On May 8, 2002, XO Massachusetts, Inc. ("XO") filed a Motion to Compel Verizon Responses to XO Information Requests ("XO Motion"). On May 9, 2002, Allegiance Telecom of Massachusetts, Inc. ("Allegiance") filed a Motion to Compel Responses to Information Requests ("Allegiance Motion").

The Hearing Officer invited comment on the two motions. On May 20, 2002, the Department received comments from Verizon and AT&T Communications of New England, Inc. ("AT&T"). On May 22 and 24, 2002, the Department received reply comments from XO, Allegiance, AT&T, and Qwest Communications Corporation ("Qwest").

II. MOTIONS

A. XO Motion

In its Motion, XO requests that Verizon provide a complete response to information request XO-VZ-1-6, which seeks information on the costs of implementing Verizon's proposed security plan described in its April 5, 2002 panel testimony (XO Motion at 1). XO argues that Verizon has made a "drastic" proposal without any estimates of the costs that the competitive local exchange carriers ("CLECs") will incur (id. at 2). XO maintains that it is reasonable for the Department to hear testimony on how these costs would impact CLEC ability to continue operating in Massachusetts, or suggest other security methods that might be more cost-effective, and that CLECs cannot provide such testimony without Verizon providing the cost information requested by XO (id. at 3). XO contends that the cost information it seeks is relevant to the

reasonableness of Verizon's proposed security changes, and must be considered by the Department in determining which security measures should be implemented (id. at 2, 4; XO Reply Comments at 2).

Referencing discussion regarding costs on the record during the procedural conference where the Hearing Officer stated that the Department would defer cost issues to a tariff or compliance filing, XO argues that addressing cost issues at that stage would be too late, and that cost information is needed in order to ensure that the Department select the most cost-effective way to maximize network security (XO Motion at 3).

B. Allegiance Motion

Allegiance also requests that the Department compel Verizon to respond to a request for cost information (AL-VZ-1-5, which seeks estimated costs associated with real-time monitoring of central offices ("COs") where collocation occurs). Allegiance argues that cost must be considered because cost is always an issue in regulatory proceedings, and is embedded in the "just and reasonable" standard by which the Department will assess Verizon's security policies (Allegiance Motion at 8). Allegiance further maintains that costs are at issue because of the potential effect of those costs on competition and consumers (id. at 9). Allegiance states that it is looking for cost estimates for different collocation security methods, and not information that would require an "extensive special study" as stated by Verizon (id.; Allegiance Reply Comments at 7). Furthermore, Allegiance states that Verizon raised the issue of cost in its testimony (Allegiance Reply Comments at 6 n.2). Allegiance contends that in the past the Department has focused on balancing costs and benefits of security measures in COs (id. at 7).

Regarding the discussion on cost at the procedural conference, Allegiance states that the discussion occurred before it was known that Verizon would make a proposal to impose all costs on CLECs, and that the discussion does not have the legal weight of a ruling on the scope of the proceeding (Allegiance Motion at 8 n.3). Allegiance also argues that the discussion at the procedural conference does not preclude consideration of whether certain measures are, in general, cost justified, taking into account their potential effect on competition and their estimated cost relative to other available security measures (id.). The Department may still determine whether Verizon's tariffs are "just and reasonable" at a later phase in this proceeding (id.).

Allegiance also requests that the Department compel Verizon's response to AL-VZ-1-1 (requesting a diagram of the floor plan of each CO). Allegiance argues that this information is required because Verizon's panel testimony states that its proposed security measures are "necessary because of the present network architecture and configuration of equipment and facilities in Verizon's MA's COs and [remote terminals]" (Allegiance Motion at 5, citing Verizon's panel testimony at 5). According to Allegiance, Verizon has provided no evidence

regarding equipment and configuration to support one of its primary positions in this case (id. at 6). Allegiance contends that Verizon must present information regarding its network architecture and configuration of equipment, at least the location of CLEC equipment relative to Verizon's equipment, and that providing CO floor plans is a reasonable option (id. at 7).

In its Reply Comments, Allegiance contends that the floor plans are necessary because of the need of CLECs to discover the future effect of Verizon's separate and secure proposal on expansion of CLEC collocation in Massachusetts (Allegiance Reply Comments at 4). In addition, Allegiance contends that the floor plans are necessary to determine whether there is any space in COs designated as "critical" for CLEC-controlled equipment that does not present an unacceptable security risk (id. at 5). Finally, if the Department does not compel production of the floor plans, Allegiance urges the Department to strike portions of Verizon's testimony which link its proposed collocation security plan to Verizon's current equipment and facilities configuration (id. at 6).

III. COMMENTS

A. Verizon

Verizon objects to both motions, stating that the requested information is not readily available, irrelevant, and beyond the scope of the proceeding. Regarding the requests for cost information, Verizon argues that those requests are premature and unreasonable, stating that the Hearing Officer, during the procedural conference, indicated that costs would be considered in a subsequent phase of the proceeding (Verizon Comments at 5). Verizon contends that it is untimely and unfair for the parties now to raise objections (id.). Verizon further argues that it has not conducted a cost study based on its specific collocation security proposal, and that a cost study would be premature where costs are a function of the type of security plan adopted by the Department (id.). Finally, Verizon indicates that it has not quantified the COs that would be designated "critical" under its proposal, and therefore cannot determine specific costs associated with that proposal (id. at 6).

Regarding the request for CO floor plans, Verizon maintains that the data are not relevant to this proceeding, and not readily available in the form requested (id. at 1). According to Verizon, under its proposal, any existing physical collocation arrangements not in secure and separate space would be relocated, if feasible, or converted to virtual collocation; however, Verizon has identified only one existing physical collocation arrangement that would change under its proposal (in Hopkinton) (id. at 3). Verizon agrees to provide a redacted version of its floor plans for Hopkinton (id.). Verizon states that its plan would not cause relocation or rearrangement of existing physical collocation in any other CO, and therefore further floor plans are not necessary (id.). Finally, Verizon argues that its floor plans are not available in the form requested (redacted) and they are not drawn with a uniform scale and

therefore would not be useful to determine relative distances between equipment (id. at 4).

B. CLECs

XO, Allegiance, AT&T, and Qwest support granting both motions to compel.¹ AT&T characterizes the discussion at the procedural conference as deferring cost recovery issues to another phase of this proceeding, including the rate design for new rate elements in a tariff requiring a cost study (AT&T Comments at 2). AT&T denies that the Hearing Officer identified relative cost-effectiveness of security measures as outside the scope of this proceeding (id., AT&T Reply Comments at 2). Furthermore, AT&T argues that consideration of cost is necessary to sound policy making, and that the security experts have determined that relative costs of alternative measures are relevant in this proceeding (AT&T Comments at 2). AT&T contends that Verizon must provide a general level of cost information sufficient to judge whether the adverse impacts (including costs) of its proposed changes to current collocation arrangements are warranted (a) by the additional level of security, if any, achieved, and (b) by the demonstrated absence of less expensive and disruptive means of achieving security (id. at 5). According to AT&T, a reasonable analysis of what security measures to adopt must include an analysis of what effect those measures will have on Verizon and its competitors, including costs (AT&T Reply Comments at 2).

Qwest contends that costs have customarily been a primary factor in determining whether any collocation requirements are “just and reasonable,” including whether a requirement is operationally and economically practical (Qwest Reply Comments at 2). Qwest states that costs are inherently part of this investigation, and the procedural conference did not exclude costs from the investigation (id. at 3). According to Qwest, Verizon itself raised the issue of security cost in its panel testimony (id. at 4). Qwest argues that cost estimates for the available security measures are not premature, and these estimates are available in the ordinary course of business or as a result of earlier proceedings in Massachusetts (id.).

IV. ANALYSIS AND FINDINGS

Regarding costs, the Hearing Officer notes that the discussion on the cost issue at the procedural conference took place before the Department received Verizon’s proposal for collocation security. Now that Verizon’s current security measures and collocation proposal is before the Department, the Hearing Officer may more specifically identify the role of cost in this proceeding.

¹ XO and Qwest address only the issue of cost information. AT&T states that it supports Allegiance’s motion to compel floor plans; however, its comments address the cost issue only.

First, in this portion of the proceeding, the Department will address Verizon's obligations with respect to CO security, and whether Verizon is meeting those obligations. As the Department stated in its Order opening this investigation, the Department stated that it intended "to assess the security measures in place to protect [Verizon] facilities." Collocation Security Investigation, D.T.E. 02-8, at 1, Vote and Order To Open Investigation (January 24, 2002). The Department further stated that it intended to examine "the adequacy of security measures implemented in Verizon's central offices and other facilities, focusing on preventive, rather than 'after-the-fact,' measures." Id. at 7. If, after assessing Verizon's current security measures and whether they are adequate under § 16, the Department finds that Verizon is meeting its obligations regarding collocation security, the Department will not order any changes.

Second, if the Department finds that Verizon is not meeting its obligations, then the Department will order Verizon to make certain changes.² Those changes could include more effective prescreening and tracking of personnel, either through stricter enforcement of existing policies, or deploying additional devices in the COs. Those changes could also include changes to current collocation policy. Before adopting specific policies, though, the Department would require Verizon to submit a filing outlining in detail how it would comply with the Department's directives, and include cost data to support those specifics. The issue of the cost-effectiveness of Verizon's proposed security methods would be addressed at that time.

The Department is interested in the effect of the various proposed security methods. Indeed, there is evidence in testimony and discovery responses of the general effect of Verizon's proposals.³ The Department is also interested in the relative effectiveness of various security measures, including alternative security measures proposed in CLEC rebuttal testimony.⁴ The issue of whether particular security methods are cost-effective is important to the Department's ultimate determinations; however, cost questions will be addressed at a later time.

² To the extent that the Department orders changes to collocation policy that conflicts with existing federal law, the Department would petition the Federal Communications Commission for an exemption from its rules. See Vote and Order To Open Investigation at 7 n.4.

³ These effects include number of collocation arrangements that must be relocated or rearranged under Verizon's proposal, alleged anti-discrimination and anti-competitive effects, and the desirability of virtual collocation.

⁴ The CLECs have had the opportunity of presenting cost information on the security measures they have proposed.

Regarding the floor plans, Verizon has identified that its proposal, absent the “critical central office” portion, would affect one existing collocation arrangement in one CO. Verizon has offered to provide a floor plan of that CO. Regarding future collocation arrangements, the Hearing Officer does not see the need for floor plans of each CO. If a CLEC requests collocation in a CO that does not have space for a secured and separate physical collocation arrangement, Verizon will notify the CLEC at that time, and the CLEC may then challenge Verizon’s determination according to established rules. See Petition of Teleport Communications Group Inc., D.T.E. 98-58 (1999). In addition, there are other avenues to pursue information of the effect of Verizon’s proposal on CO space exhaust, without redacting floor plans of 169 COs. The Hearing Officer notes that if Verizon chooses not to support its testimony that current equipment configurations necessitate changes to collocation policy, it does so at its own risk.

In accordance with the discussion above, the Hearing Officer hereby denies the Motions to Compel of XO and Allegiance.

V. RULING

Accordingly, the Motions to Compel of XO and Allegiance are hereby denied.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by close of business, July 2, 2002. A copy of this Ruling must accompany any appeal. Responses to any appeal must be filed by noon, July 8, 2002.

June 28, 2002
Date

_____/s/_____
Joan Foster Evans
Hearing Officer

cc: Mary L. Cottrell, Secretary
William P. Agee, Assistant General Counsel
Michael Isenberg, Director, Telecommunications Division
Debra Conklin, Telecommunications Division
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Service List